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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL 1998

BEFORE :

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION No.7570/1997.

BETWEEN :-

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1. Sri.A.Sriramaiah,  
S/o Sri.Venkataramaiah,  
Major, No.61/2,  
Viviyani Road,  
Richards Town,  
Bangalore-560 005.
  2. Sri.A.Sundar Raju,  
S/o Sri.A.Sriramaiah,  
Major, No.73,  
B.S.A.Road,  
Frazer Town,  
BANGAALORE-560 005.

...Petitioners.

( ByM/s.Tarakaram, Adv., )

A N D :

1. Karnataka State Finance  
Corporation,  
Represented by its  
Secretary,  
No.25, Mahatma Gandhi,Road,  
BANGALORE-560 001.
2. The Deputy Manager(Recovery)  
Karnataka State Finance,  
Corporation, Kolar Branch,  
KOLAR.
3. The Special Tahsildar (Recovery)  
Karnataka State Finance Corporation,  
Bangalore Rural Area, No.48,  
Church Street,  
Bangalore-560 001.

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4. K.Raghavendra,  
Managing Partner of  
M/s.Keerthi Enterprises,  
No.5, Pathi Building,  
Appajirao lane,  
BANGALORE-2.

...Respondents.

( By Sri.B.Rudragowda,Adv., )

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This writ petition filed praying to quash Annexure-N dated 4-3-1997, and direct the respondents not to make any claim on the petitioners property mentioned in the Schedule on the basis of or for the recovery of any amount which may be due and payable to the R-1 by virtue of petitioners being former partners of M/s.Sri Hanuman Enterprises; etc.,

This writ petition coming on for hearing, the same having been heard and reserved for pronouncement of order, the Court made the following order :

O R D E R

In this petition for a certiorari the petitioners call in question the validity of an auction notice issued by the Special Tahsildar of the respondent-Corporation proposing to auction the immovable property mortgaged with the Corporation by way of a collateral security for the repayment of a loan advanced by the latter to M/s.Hanuman Enterprises. The facts leading to the present controversy have been set out in the decision of this

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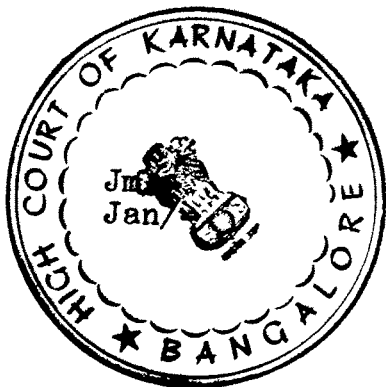
Court dated 27-6-1996 in W.P.Nos.2221-23/1990 filed by Sri.Parasmal and others against the Corporation. I do not therefore propose to recount the same at length. A reference to the said order should in my opinion suffice. All that is for the present material is that the petitioners stood as guarantor for the repayment of two loans one for a sum of Rs.5,25,000/- and the other for a sum of Rs.2,00,000/- and furnished by way of collateral security the immovable property owned by them described in the loan agreement dated 28-6-1979. The industrial unit set up by M/s.Hanuman Enterprises was in due course taken over by the Corporation under Sec.29 of the Act and sold for the recovery of a part of the amount actually outstanding against the said borrower. Proceedings were then initiated against the petitioners for recovery of the balance outstanding leading to the issue of the auction notice mentioned above. Aggrieved by the said proceedings, the petitioners have as indicated earlier filed the present writ petition in which Mr Tarakaram, Counsel appearing on their behalf raised several contentions to show that the proceedings were illegal and that the petitioners were in no way liable to pay any part of the outstanding amount. Since this writ petition must

succeed on a short ground, I do not propose to deal with the other contentions that were strenuously urged at the bar. The challenge to the auction notice must in my opinion succeed on the ground of violation of principles of natural justice. The proceedings in question are according to Mr. Rudragowda, learned Counsel for the respondents based on a certificate issued by a Managing Director of the respondent-Corporation in accordance with Section 3 of the Karnataka Public Monies Recovery of Dues Act 1979. Mr. Gowda has not however produced the certificate issued by the Managing Director even when he was directed to do so together with the relevant record. That direction was issued keeping in view the contention urged by Mr Tarakaram that the certificate had been issued without notice to the petitioners and that the determination of the petitioners liability was violative of the principles of natural justice. That Sec.3 of the Act aforementioned empowers the Managing Director to issue a certificate for recovery of the outstanding amount due from any person referred to in Section 3 cannot be disputed. What is however important is that such a certificate which has the effect of determining the liability of

the person concerned can be issued only after he is put on notice and afforded an opportunity of being heard in the matter. No such notice was apparently issued at any stage by the Managing Director to the petitioner. The issue of such a notice assumes all the more importance in view of the specific case set-up by the petitioner that they are not liable to be proceeded against nor can their property be sold for recovery of the balance amount outstanding against M/s. Hanman Enterprises. Whether or not Sec. 3 of the Act was applicable to enforce the liability of a guarantor as also the question whether or not the petitioners stood absolved from their liability on account of reconstitution of the partnership concern are questions that may have <sup>been</sup> raised by the petitioners had a notice been issued to them before issuing the certificate. Suffice it to say that non issue of any notice and the denial of opportunity of an hearing to the petitioners before the matter was entrusted to the revenue agency for making recoveries was bound to cause prejudice to them and visit them with serious civil consequences rendering the certificate and the follow up proceedings illegal.

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2. In the result, this writ petition succeeds and is hereby allowed. The impugned recovery proceedings initiated against the petitioners are hereby quashed. Liberty is however ~~in~~ reserved to the Managing Director of the respondent-Corporation to issue a fresh certificate in accordance with law after affording to the petitioners an opportunity of being heard in the matter. Since the matter has already been delayed, I direct that the petitioners shall appear before the Managing Director of the respondent-Corporation on 30-4-1998 to receive the notices which he may serve upon them and to which the petitioners shall be at liberty to file objections within such time as may be specified for the purpose. Upon consideration of objections if any filed, the Managing Director shall pass fresh orders on the subject in accordance with law. In the circumstances, however, the parties are left to bear their own costs.



Sd/-  
JUDGE